IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(*Special Original Jurisdiction*)

WEDNESDAY, THE THIRTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

P R E S E N T

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

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WRIT PETITION NO. 23295 of 2004

Between :

Smt.S.Suhasini Gupta, W/o.Sri S.Suresh Gupta,
R/o.flat No.304, Vindhya Block,
Aditya Enclace, Ameerpet, Hyderabad.

..... PETITIONER

A N D

1 The Municipal Corporation of Hyderabad, Tank Bund Road, Hyderabad,

rep.by its Commissioner.

2 M/s. K.L.N.R.Consturctions, 7-1-455/2 & 455/3, Ameerpet, Hyderabad,
rep.by its Managing partner Mr.K.Suresh.

3 S.Viswanadham, s/o.Mallaiah, aged about 40 years, r/o.7-1-455/2 &

455/3, Ameerpet, Hyderabad.

4 S.Ramesh, s/o. Mallaiah, aged about 37 years, r/o. r/o.7-1-455/2 &

455/3, Ameerpet, Hyderabad.

(R3 and R4 are impleaded vide orders dated 13-7-2005 passed in

WPMP.No.18330 of 2005)

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order direction or writ particularly one in the nature of writ of Mandamus or any other appropriate writ (i) declare the action of the first respondent in not

safeguarding the public property on 20 feet road in Someshwar Rao Enclave Lay out, plot No.19 and plot NO.20, Ameerpet, Hyderabad is illegal and arbitrary ii) direct the first respondent to demolish unauthorized constructions made in plot NO.19 and plot No.20 and consequently direct the respondents to demolish the illegal constructions made by the second respondent and take over the possession of the said road to develop the same and pass other order or orders.

Counsel for the Petitioner : MR.B.SHIVA KUMAR

Counsel for the Respondent No.1 : SMT.G.JYOTHI KIRAN

Counsel for the Respondent No.2 : MR.V.SUDHAKAR REDDY

Counsel for the Respondents 3 & 4: MR.VEDULA VENKATARAMANA

The Court made the following : (order follows 2nd page)

O R D E R

This writ petition is filed seeking to declare the action of the first respondent in not safeguarding the public property on 20 feet road in Someshwar Rao Enclave Layout, Plot No.19 and 20, situate at Ameerpet, Hyderabad as illegal and arbitrary and secondly to direct the first respondent to demolish unauthorized constructions made in Plot No.19 and 20 and consequently direct the first respondent to demolish the illegal constructions made by the second respondent and take over possession of the said road and develop the same in the interest of justice.

The case of the petitioner is that she is the owner of Flat No.304, Vindhya Block, Aditya Enclave, Ameerpet, Hyderabad and she is an undivided shareholder of 505 sq.yards out of 10,300 sq.yards in sy.nos. 11, 13 to 16, 235, 236, 243, 247 and 66 (UDAFA) of Ameerpet village, Hyderabad. She had purchased the same from Sunrise Co-operative Housing Society Limited vide registered sale deed dated 27-1-1998.

It is submitted that adjacent to her flat, the second respondent has taken up construction in plot Nos.19 and 20 of Someshwar Rao Enclave Layout. In between plot nos.19 and 20, there is 20 feet wide road in the layout, adjacent to plot no.20 leading to plot no.19 abutting the complex. The second respondent has been making constructions in the plot nos.19 and 20 and super structure was already constructed. Thereafter, the second respondent has been making pillar constructions in 20 feet road adjacent to plot no.20, which is a public property in terms of layout sanctioned by the first respondent. It is submitted that on discrete enquiries, the petitioner she came to know that the second respondent has made a representation to the first respondent for alienation or lease or on out right sale. In pursuance thereof, the first respondent had addressed a letter to the Government vide Lr.No.REP/G/2168/TP-5/SY-2002-469 dated 10-12-2003 that 20 feet road is vested property of the first respondent and as per the instructions of the Government and various courts, vested property of the first respondent cannot be allotted to any individuals and moreover the layout was approved as per technical pattern of HUDA and hence his requested was rejected through proceedings dated 22-3-2003 and that the factual report was submitted to the Government on 22-3-2003 itself. Again it was represented that it cannot be allotted to private individuals, as it would be in violation of Layout Rules 1965. The Government vide Memo.No.202/F2/2003-04 dated 21-6-2004 has communicated to second respondent that their request for allotment of road portion is rejected. After receipt of rejection order, some of the plot owners made a representation to the first respondent on 28-10-2004, in spite of the same, the second respondent is proceeding with the constructions in 20 feet road,

which admittedly does not belong to any private individual.

In this context, the petitioner submits that after communicating the rejection orders passed by the Government, the second respondent started constructions and virtually occupied the entire road, thereby what they could not get from the Government, have now achieved by making an illegal construction without any power or authority. In spite of representations made by the public and the owners of adjacent plots, the first respondent has not taken any action to prevent such illegal construction or demolishing the illegal encroachments made on 20 feet road. The said inaction on the part of the first respondent is opposed to public policy and in violation of Municipal Corporation Act and rules framed thereunder.

The petitioner further submits that the second respondent has obtained permission from the Municipal Corporation and HUDA for Stilt plus five floors for residential purpose, whereas, the second respondent has constructed cellar for parking, groundfloor for shops and four floors for commercial/residential purpose and raised pillars for construction of another floor. Thus, the second respondent constructed cellar without any sanction and it is in violation of sanctioned building rules. Moreover, the second respondent has not left any set backs as required. Whereas the building rules contemplates four meters set backs but the second respondent has put only 2 to 3 feet on the south and western side and extended the cellar in the set backs to be provide. In view of the constructions undertaken by the second respondent, air, light and ventilation of adjoining buildings is adversely affected. Therefore, the petitioner filed this writ petition on the premise that when she failed in her attempt to stop the illegal constructions being made by the second respondent

and also the inaction on the part of the first respondent in taking any action.

After receipt of notice, the first respondent filed its counter stating that on noticing gross violation of the second respondent, the first respondent had issued notice on 9-7-2004 under Section 452 of Hyderabad Municipal Corporation Act for the unauthorized constructions and deviations. Thereupon, the second respondent without submitting any explanation approached the Court of IV Junior Civil Judge, City Civil Court, Hyderabad and filed OS.No.3892 of 2004 restraining the corporation from interfering with the peaceful construction by way of demolition or otherwise in the suit schedule property in any manner, whatsoever including demolition. During the course of inspection on 15-10-2004, the second respondent has started unauthorized construction of two RCC columns and basement, which falls in 20 feet wide road on southern side and the same was removed by way of demolition as the said two RCC columns and basement were constructed by encroaching 20 feet wide road margin. The officials of the first respondent again inspected the said premises on 02-12-2004 and noticed that the second respondent has again re-erected two RCC columns illegal on 20 feet wide road. Again the officials of the first respondent demolished the same. It is submitted that the first respondent could not remove one RCC column, which is disputed by the petitioner as the same is covered by the orders passed in IA.No.781 of 2004 in OS.No.3892 of 2004. On the measurements taken by the first respondent, the third column is on 20 feet road by encroaching 3 feet. The part of the building covered under the sanctioned plan is resting on this pillar and if this pillar is disturbed, the part of the building rested on this pillar will be collapsed, which is now covered by the orders

dated 19-7-2004passed by the court below in IA.No.781 of 2004 in OS.No.3892 of 2004. Therefore, the first respondent could not remove the said column and as soon as the interim orders are vacated, the first respondent will initiate action against the unauthorized constructs and encroachments made by the second respondent.

On the other hand, the learned counsel for the petitioner submits that if that is the case, she may be permitted to implead herself in the said suit, as the first respondent has not taken any steps to vacate the interim injunction order passed in IA.No.781 of 2004 in OS.No.3892 of 2004 by the court below.

Further in the main writ petition, the implead petitioners have filed WPMP.NO.18330 of 2005 stating that they are the absolute owners and possessors of all that property bearing No.7-1-455/2 and 7-1-455/3 admeasuring 504.5 sq.mts., situate at Ameerpet, Hyderabad, as the same was purchased under registered sale deed under Document Nos.407/96 and 421/96 dated 19-4-1996. Further they obtained construction permission from the first respondent for construction of a building complex over the said property for stilt plus five upper floors as per permit no.197/59 dated 08-10-2001 and completed construction except finishing work. At one stage of the construction, they have requested the second respondent to take up a part of the construction but since the second respondent has defaulted, they have proceeded with the construction and completed the same. They filed OS.No.3892 of 2004 in the Court of IV-Junior Civil Judge, City Civil Court, Hyderabad seeking perpetual injunction restraining the first respondent from demolishing their construction. The said suit is pending and an interim injunction is operating against the first respondent.

The implead petitioners in WPMP.No.18330 of 2005 submits that the first respondent-writ petitioner filed the writ petition on the ground that the part of their construction is spreading on to a public road and it is not in conformity with the sanctioned plan. But the writ petitioner has not impleaded them as parties to the proceedings. The second respondent, which has no right or interest over the constructed building complex, is shown as second respondent. When the implead petitioners came to know of the same, they realized that the writ petitioner is owning some built up area in the adjoining Aditya Trade Centre Complex, which is only aiming at demolition of our construction by misleading the factual aspect. In fact the writ petitioner is no way connected to their site of construction or the alleged road. The implead petitioners submits that the writ petitioner is set up by some persons, who have oblique motives to extort them for wrongful gain. The writ petition should have been dismissed inlimini since the writ petitioner is not at all connected with their construction, since the writ petitioner has not submitted any representations before approaching this court with a complaint of inaction on the part of the first respondent. It is now well settled that this court will not entertain writ of mandamus unless there is a prior demand and refusal of demand and inaction.

The implead petitioners submits that they are necessary parties to this writ petition. The contention of the writ petitioner that they have made construction by encroaching on to a road, which is vested with the first respondent, is incorrect. In fact, they are advised to amend their O.S.No.3892 of 2004 for a declaration that the approach road to Plot No.19 does not belong to the first respondent and they are

moving the necessary amendment petition in the said suit. It is submitted that all the contentions of the writ petitioner are incorrect and devoid of any merit and they reserve their right to file a detailed counter after their implead petition is ordered by this court.

Heard the learned counsel for the writ petitioner and as well as the learned standing counsel for the first respondent and also the respondents 3 and 4 at length.

Considering the facts and circumstances of the case, without going into the merits or otherwise, while ordering WPMP.NO.18330 of 2005, I deem it appropriate to dispose of this writ petition with a direction to the petitioner as well as the first respondent to move the Court of IV-Junior Civil Judge, City Civil Court, Hyderabad, for vacating the orders dated 19-7-2004 passed in IA.No.781 of 2004 in OS.No.3892 of 2004 and take further recourse against the implead petitioners.

With the above direction, the writ petition is disposed of. No costs.

JULY 13th, 2005. ----------

I S L. ELIPE DHARMA RAO, J.

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To

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1) The Commissioner, Municipal Corporation of Hyderabad, Tank Bund Road, Hyderabad.

2) 1 CC to MR.B.SHIVA KUMAR, Counsel for the petitioner.

3) 1 CC to MR.VENKATARAMANA , Counsel for Respondents 3 and 4.

4) 1 CC to MR.SUDHAKAR REDDY, Counsel for Respondent No.2..

5) Two CCs to Mrs.G.Jyothi Kiran, Standing Counsel for the Municipal Corporation, Hyderabad, High Court Buildings, High Court of AP Hyderabad.

6) 2 CD copies .